

TENNESSEE AMENDED ISSUES MATRIX
ICG TELECOM GROUP/ BELL SOUTH ARBITRATION
TRA DOCKET NO. 99-00377

ISSUE

ICG TELECOM GROUP POSITION

BELL SOUTH POSITION

I. General Issues

<p>Issue 1: For the purposes of this agreement, should dial-up calls to Internet service providers ("ISPs") be treated as if they were local calls for purposes of reciprocal compensation?</p> <p>Consolidated for hearing purposes with Docket 99-00430, ITC Delta/Com Arbitration.</p>	<p>Yes. The TRA has previously ruled on this issue in the NEXTLINK arbitration (Docket 98-00123). ICG seeks the same relief. Since the NEXTLINK hearing, moreover, the FCC has issued a Declaratory ruling concerning local calls to ISPs. In the Ruling, the FCC explicitly recognized that state commissions may continue to require compensation for ISP traffic in the absence of any federal compensation rule. Until the FCC acts, if it ever does, ICG will receive no compensation for handling these calls unless the TRA orders it.</p>	<p>No. Under 47 U.S.C. § 251 (b)(5) and 47 C.F.R. § 51.701, it is clear that reciprocal compensation is applicable only to local traffic, not to all traffic that may be routed over "local" trunks. "Local" trunks may actually carry access, or toll, traffic in addition to local traffic. ISP-bound traffic, even if routed over local interconnection trunks, is not subject to the 1996 Act's requirement of reciprocal compensation.</p> <p>The FCC's recent Declaratory Ruling in CC Docket Nos. 96-98 and 99-68, released on February 26, 1999, confirmed unequivocally that ISP-bound traffic is interstate in nature, not local. Under the provisions of the 1996 Act and FCC rules, only local traffic is subject to reciprocal compensation obligations. Thus, reciprocal compensation is clearly not applicable to ISP-bound traffic. In addition to being contrary to the law, treating ISP-bound traffic as local for reciprocal compensation purposes is contrary to sound public policy.</p> <p>Although BellSouth does not believe that compensation for ISP-bound traffic is subject to a Section 252 arbitration because ISP traffic is interstate, not local, traffic, BellSouth will propose an interim mechanism for ISP-bound traffic until the FCC issues a final order in its inter-carrier compensation docket.</p>
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EXECUTIVE SECRETARY

From
ICG
NoCover letter

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II. Unbundled Network Elements

<p>Issue 3: Where, how and at what rate should BellSouth make available Packet-switching capabilities as UNEs throughout the term of the contract, including: (a) user-to-network interface ("UNI") at 56 kbps, 64 kbps, 128 kbps 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b) network-to-network interface ("NNI") at 56 kbps, 64 kbps, 1.544 Mbps, 44.736 Mbps; and (c) data link control identifiers ("DLCIs"), at committed information rates ("CIRs") of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps, 20.072 Mbps? <i>If so, what are the proposed rates?</i></p>	<p>ICG accepts the rates set forth in Varner Exhibit A JV-8. This issue is now resolved.</p>	<p>BST agrees to comply with ICG's request at rates proposed by BellSouth until the FCC issues a final non-appealable order on Rule 51.319 and with other limitations. Moreover, until the Authority's prehearing conference held on August 25, 1999, BellSouth was under the impression this issue was settled regionally, subject only to ICG's review of BellSouth's rates in each state. BellSouth's understanding was based upon representations made by ICG in a mediation conference in Montgomery, Alabama, held on August 10, 1999. BellSouth recognizes that ICG raised collocation questions relating to this issue in that mediation; however, irrespective of the collocation questions, the parties settled Issue 3 in its entirety in Alabama. (The North Carolina Utilities Commission ("NCUC") did not consider the UNE issues -- herein issues 3, 4 and 6 -- because of the fluidity of the issue at the FCC, and the concern that UNE policy be consistent and not established on a piecemeal basis. The NCUC has an ongoing UNE docket which was deemed to be an appropriate place to consider those issues.)</p>
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<p>Issue 4: Should a local loop combined with dedicated transport be provided as a UNE? <i>If so, what is the proposed rate?</i></p>	<p>Yes. Both parties agree that enhanced extended loops (EELs) should be made available. BellSouth, however, insists that the EELs be offered through a "Professional Services Agreement" outside the jurisdiction of the TRA and at whatever rate BellSouth decides to charge. ICG believes that, like other network elements, the components of an EEL must be offered at a TELRIC-based rate approved by this Authority.</p> <p>In light of the Supreme Court's decision in <i>Iowa vs. FCC</i>, and the FCC's Nov. 5, 1999 UNE Order, the TRA has authority under both federal and state law to order BellSouth to provide extended loops at TELRIC-based rates. (See ¶ 154 of the FCC Order, holding that states may "impose additional obligations upon incumbent LECs beyond those imposed by the national [UNE] list." Furthermore, although the FCC has not reinstated rules 51.315 (c-f), the FCC stated that section 251 (c)(3) of the federal Act "provides a sound basis for reinstating" those rules which require LECs to provide unbundled loop and transport elements on a combined basis.</p> <p>EEL rates should be based on the following formula: TELRIC rate for unbundled loop + TELRIC for a cross-connect at appropriate capacity + TELRIC rate for inter-office transport at appropriate capacity = TELRIC rate for an EEL.</p> <p>An example of a typical EEL rate is attached to Starkey's Rebuttal Testimony.</p>	<p>No. First, neither loops, ports, nor transport have been defined by the FCC as unbundled network elements that BellSouth must provide. Second, even if loops, ports and transport are defined as UNEs, BellSouth is only obligated to provide combinations of those elements where they are <u>currently combined</u> in BellSouth's network.</p> <p>Because BellSouth is not required to combine network elements for CLECs under the 1996 Act, the issue of applicable rates for such network combinations is not properly the subject of arbitration. To the extent the Authority concludes otherwise, or determines to establish rates for network elements that are currently combined in BellSouth's network, the Authority should do so in the context of a generic proceeding rather than an arbitration involving one CLEC. BellSouth, however, is willing to provide this combination through commercial agreement, at a market rate but not at a TELRIC-based rate.</p> <p>Moreover, the FCC held in its Third Report and Order, "We decline to define the EEL as a separate network element in this Order. As discussed above, the Eighth Circuit is currently reviewing whether Rules 51.315(c-f) should be reinstated. We see no reason to decide now whether the EEL should be a separate network element in light of the Eighth Circuit's review of those rules." Third Report and Order, ¶ 478.</p>
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<p>Issue 5: Should BellSouth be subject to liquidated damages for failing to meet the time intervals for provisioning UNEs? <i>If so, what level of damages, concessions or remedies are appropriate? What time intervals?</i></p>	<p>Yes. Pending the establishment of a Tennessee-specific plan which includes performance standards and liquidated damages, ICG recommends that the TRA adopt in the interim the performance standards and penalties recently adopted by the Texas Public Utilities Commission. Having argued at length that liquidated damages are appropriate for inclusion in BellSouth's tariffs and Contract Service Arrangements, BellSouth cannot seriously now contend that the TRA has no authority to consider such penalties or that liquidated damages are not a useful method of ensuring compliance with contracts and tariffs.</p> <p>In regard to time intervals, the measurements pertaining to provisioning UNEs are Measures #55-64 on pages 64-79 of the Performance Measurements Business Rules attached to the direct testimony of Gwen Rowling. These Business Rules articulate the applicable intervals for UNE provisioning.</p> <p>Regarding the level of remedies, each performance measurement is categorized as a Tier 1 and/or Tier 2 measurement. In addition, these tiers are further disaggregated into "High," "Medium" and "Low" designations. The amount for damages and penalties are listed on page 10 of Attachment 17: Performance Remedy Plan -- Texas, which was attached to the direct testimony of Gwen Rowling. This chart indicates the damages and assessments that are applicable on a per occurrence or per measurement basis. Additionally, as described below in responses to Issues 21 and 24, the Texas Plan imposes payment caps for some measures.</p>	<p>BellSouth disagrees that the so called "performance measures" and performance "guarantees" proposed by ICG are appropriate. BellSouth has offered a comprehensive set of performance measurements (Service Quality Measurements or "SQMs") which ensure that BellSouth provides all CLECs with nondiscriminatory access as required by the 1996 Act and applicable rules of the Federal Communications Commission ("FCC"). BellSouth also is willing to provide ICG any additional performance measurements that the Authority may order BellSouth to provide to other CLECs in this state.</p> <p>With respect to performance "guarantees," BellSouth does not believe that financial incentives, "guarantees," penalties or liquidated damages are appropriate matters for arbitration under the 1996 Act. The Authority has previously declined to "require a system of penalties and credits" in the context of an arbitration. (See Brief of the TRA, Case No. 39-97-0616, at 26, U.S. Dist. Ct., M.D. Tenn. (8-13-99); and MCI/BellSouth Arbitration before the TRA in Docket No. 96-01271). ICG's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ICG has adequate legal recourse in the event BellSouth breaches its interconnection agreement.</p>
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<p>Issue 6: Should volume and term discounts be available for UNEs? Have specific volumes and terms for given items been identified? <i>If so, what are they?</i></p>	<p>ICG has withdrawn this issue.</p>	
<p>Issue 7: Should ICG be compensated for end office, tandem, and transport elements of termination, for purposes of reciprocal compensation, when ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch? <i>If so, according to what schedule or at what rate?</i></p>	<p>Yes. In accordance with FCC Rule 47 C.F.R. § 51.711(a)(3) specifically addresses this issue. According to the rule, ICG is entitled to compensation at BellSouth's "tandem interconnection rate" whether or not ICG itself uses a tandem switch to serve that area. BellSouth's position ignores the rule.</p> <p>As the TRA decided in the NEXTLINK arbitration, the reciprocal compensation rate should be the UNE proxy price of \$0.005 per minute for transport and termination of local traffic through the BellSouth tandem.</p>	<p>No. The appropriate rates for reciprocal compensation are the elemental rates for end office switching, tandem switching and common transport that are used to transport and terminate local traffic. If a call is not handled by a switch on a tandem basis, it is not appropriate to pay reciprocal compensation for the tandem switching function.</p>

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<p>Issue 11: Should BellSouth commit to the requisite network build out and necessary support when ICG agrees to a binding forecast of its traffic requirements in a specified period?</p>	<p>Yes. To avoid blockages, ICG is willing to commit to pay for BellSouth's network improvements that are not fully utilized. BellSouth has no principled reason to refuse ICG's proposal. In the alternative, ICG would propose that, if the parties cannot agree on a forecast, they could submit the matter to the TRA for decision under T.C.A. §65-4-114 (authorizing the TRA to order "any reasonable extension" of existing facilities where "reasonable and practical" and the utility is reasonably protected from economic loss).</p>	<p>No. BellSouth is not required by the Act or FCC rules to commit to a binding forecast with ICG or any CLEC.</p>
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<p>Issue 19: Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties?</p>	<p>Yes. The Texas Performance Measurements and remedy plan, which includes liquidated damages paid to the CLEC and assessments paid to the State, can be incorporated into a CLEC's interconnection agreement. The "due dates" for delivering services therefore are the benchmarks or parity standards delineated in each of the performance measures. Texas measurements include installation measurements disaggregated by type of UNE or service.</p> <p>Attached to the direct testimony of Gwen Rowling is "Appendix PM Subject to Tier 1 and Tier 2 Damages" that categorizes each measurement. The Appendix also lists whether the measurement is subject to liquidated damages payable to the CLEC (Tier 1 Damages) and whether the measurement is subject to assessments payable to the state (Tier 2 Assessments).</p>	<p>BellSouth disagrees that the so called "performance measures" and performance "guarantees" proposed by ICG are appropriate. BellSouth has offered a comprehensive set of performance measurements (Service Quality Measurements or "SQMs") which ensure that BellSouth provides all CLECs with nondiscriminatory access as required by the 1996 Act and applicable rules of the Federal Communications Commission ("FCC"). BellSouth also is willing to provide ICG any additional performance measurements that the Authority may order BellSouth to provide to other CLECs in this state.</p> <p>With respect to performance "guarantees," BellSouth does not believe that financial incentives, "guarantees," penalties or liquidated damages are appropriate matters for arbitration under the 1996 Act. The Authority has previously declined to "require a system of penalties and credits" in the context of an arbitration. (<i>See</i> Brief of the TRA, Case No. 39-97-0616, at 26, U.S. Dist. Ct., M.D. Tenn. (8-13-99); and MCI/BellSouth Arbitration before the TRA in Docket No. 96-01271). ICG's proposal is not required by the 1996 Act and represents a supplemental enforcement scheme that is inappropriate and unnecessary. ICG has adequate legal recourse in the event BellSouth breaches its interconnection agreement.</p> <p>BellSouth's SQMs are very similar in content and are at least as comprehensive as the performance measurements proposed by ICG. Moreover, there are several concerns with the performance remedies of</p>
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		<p>the Texas Plan. Aside from the concerns BellSouth has already raised: (1) the penalties are arbitrary, (2) penalties are applied on a daily basis, so the amounts can be unjustifiably huge, with no opportunity for BellSouth to mitigate the problem, (3) concerns have been raised regarding the proposed statistical tests during the Louisiana collaborative process, in which the parties have been working on an appropriate test for months, and (4) the remedies create an incentive for ICG to cause poor performance.</p>
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<p>Issue 20: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?</p>	<p>Yes. Under the Texas Performance Measurements and Remedy Plan, measurements categorized as Tier 1 High, Medium or Low result in liquidated damages payable on a per occurrence basis to the CLEC when the ILEC delivers "non-compliant" performance. Damages apply to "non-compliant" measures in excess of the applicable number of exempt measures. The exempt measures are a set number of measures that are set aside for the purposes of computing damages. These "exempt" measures, the so-called "K" value, provides a level of "forgiveness," so to speak, for the ILEC.</p> <p>"Attachment 17: Performance Remedy Plan - Texas" addresses the application of the "K" value and payment caps.</p>	<p>See Issue 19.</p>
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<p>Issue 21: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?</p>	<p>Yes. If BellSouth is allowed to provide inferior service in any manner to a CLEC, the CLEC's ability to function as a viable competitor in the marketplace is irreversibly harmed. Performance measures with liquidated damages are the only viable tool that can motivate an ILEC to render acceptable service to CLECs. Included in the Texas measurements that have liquidated damages attached to non-compliance are measurements that encompass ordering, provisioning, installation and maintenance of services and facilities; updates to 911 and directory listing databases; collocation; operational functionality of the ILEC's OSS systems; number portability and interim number portability.</p>	<p>See Issue 19.</p>
<p>Issue 22: Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmark?</p>	<p>As cited in the response to the previous Issues, the "Appendix PM Subject to Tier 1 and Tier 2 Damages" indicates whether a measurement is subject to liquidated damages.</p> <p>Yes. The Texas measurements include Trouble Report Rate, Missed Repair Commitments, Mean Time to Restore and Percent Out of Service less than "X" hours, and Percent Repeat Repairs. See Measurements #37-42, Measurements # 52-54, and Measurements #65-69. Additionally, the Texas plan also addresses outages due to number portability failures and coordinated conversion problems.</p>	<p>See Issue 19.</p>

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Issue 23: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?	Yes. The Texas Plan includes the matrix labeled "Appendix PM Subject to Tier 1 and Tier 2 Damages." This matrix lists the measurements subject to liquidated damages.	See Issue 19.
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<p>Issue 24: Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?</p>	<p>Yes. The Texas plan designates a per occurrence liquidated damage amount that is dependent upon whether the measurement is categorized as High, Medium or Low. The amount payable escalates according to whether the measurement has indicated non-compliance for one month, two months, etc. Some measurements are subject to a monthly payment cap that varies according to the High, Medium or Low designation. All payments are subject to the \$120 million cap.</p> <p>The payment of damages and assessments is described in "Attachment 17: Performance Remedy Plan-Texas" which was attached to Ms. Rowling's direct testimony.</p>	<p>See Issue 19.</p>
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<p>Issue 25: Should BellSouth be required to pay liquidated damages when BellSouth fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?</p>	<p>Yes. Under the Texas plan, if SWBT fails to submit performance reports by the 20th day of the month, the following assessments apply unless SWBT is excused for good cause by the Commission: If no reports are filed, there is a fine of \$5,000 per day. If incomplete reports are filed, the fine is \$1,000 per day for each missing performance result. This information is contained in "Attachment 17: Performance Remedy Plan Section 10.0 General Assessments."</p>	<p>See Issue 19.</p>
<p>Issue 26: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmark?</p>	<p>Yes. The Texas plan does not place a cap on these assessments.</p>	<p>See Issue 19.</p>